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DIVISION II
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COURT OF APPEALS, DIVISION II OF
THE STATE OF WASHINGTON

DARON KOONTZ,
Appellant,

V.

GAYNOR FITZGERALD,
Respondent,

RESPONDENT'S BRIEF

Gaynor Fitzgerald
Pro-Se
16205 Lindsay Rd, Yelm, WA 98597

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ISSUES FOR REVIEW

- I. Should an Appellant Court, upon review, interfere with the decision of a Trial Court regarding post-secondary support when there is no appearance from the entire record that injustice has been done or that the trial court has abused its judicial discretion?
- II. Did the Trial Court consider if Elari Fitzgerald is dependent upon her parents for the reasonable necessities of life?
- III. Did the Trial Court calculate Mr. Koontz's income according to the information that he submitted to the courts?
- IV. Did the Trial Court set reasonable post-secondary support according to the Washington State Support Schedule and income submitted by both parties?
- V. Did the Trial Court list the correct termination language in the order pursuant to RCW 26.19.090?
- VI. Did the Trial Court consider whether the parties had intended for their children to attend college when they were together?

STATEMENT OF THE CASE

I, Gaynor Fitzgerald filed a Petition for Modification of Child Support on May 22, 2015, requesting post-secondary educational support for my daughter Elari Fitzgerald, who just turned (20). CP at 23-26. To support my petition, I filed a Financial Declaration of Petitioner, Declaration of Gaynor J. Fitzgerald, and Washington State Child Support Schedule Worksheets Proposed by myself, Sealed Financial Source Documents, and a Financial Statement. CP at 5-22. My declaration included a letter from the University of Washington -- Tacoma stating Elari had been

admitted for the upcoming autumn 2015 quarter as a junior, but she was waiting to declare her major. CP at 16. No financial information pertaining to the University of Washington Tacoma tuition costs or fees was provided by me because Elari or I had not received any information from the college in the mail as yet and the petition for modification of child support has to be submitted prior to the child graduating from high school.

Mr. Koontz responded to my Family Court petition and requested that the Court not award post-secondary support for Elari, our daughter. CP 29-37; 51-57. Mr. Koontz filed a responsive declaration, financial declaration, and part proof of income. CP at 29-37; 45-58.

The Trial Court first heard argument in this matter on July 16, 2015. CP at 59. The Court found that neither party filed updated financial information and continued the hearing to August 13, 2015. Both parties supplemented the record with financial information. CP at 60-61. At the August 13, 2015 hearing, the Court directed myself, Gaynor Fitzgerald to file written information about the enrollment costs for Elari, including a cost bill from the University of Washington – Tacoma explaining the costs for Elari. CP at 62-63. The Court continued the hearing to September 21, 2015. CP at 63-64. I, Gaynor Fitzgerald filed a supplemental declaration on September 15, 2015 which provided a University of Washington Tuition Charge Statement, class schedule, and 2015-2016 Quarterly Tuition Rates. CP at 65-76.

At the hearing on September 21, 2015 the Court heard testimony from both parties and took the matter under advisement. CP at 77. Written orders, including the final order of child support, child support worksheets, findings of fact and conclusions of law, and order on modification of child support, were issued by Thurston County Family Court Commissioner Jonathon Lack on December 21, 2015. CP at 78-101.

Mr. Koontz filed a motion to revise the Commissioner's ruling on December 31, 2015. CP at 102-103. The hearing on the motion for revision was held on February 19, 2016 by the Honorable Judge Christopher Wickham in Thurston County Superior Court. In open Court Judge Wickham stated that "this case had gone stale" and asked that I provide updated information to them and Mr. Koontz on how Elari was doing in school. Judge Wickham asked for information on Elari's University of Washington expenses and financial information regarding her grants and loans. CP at 106. The court continued the hearing until March 4, 2016 and informed the parties they did not need to appear, both parties agreed to not appear; a written decision would be provided. CP at 106. On February 24, 2016, I, Gaynor Fitzgerald filed another supplemental declaration with a written statement of expenses, a Notice of Revised Award from the University of Washington Tacoma, a copy of an automobile insurance statement, and an unofficial transcript from the University of Washington Tacoma. These were also provided to Mr. Koontz at the address he has listed. CP at 107-114.

The court entered a new order of child support on March 4, 2016 without the presence of either party which was agreed upon by both parties at the February 19th hearing. CP at 117;118-132. The order also allowed Mr. Koontz to request suspension of support should attendance and satisfactory progress in Elari's education cease. CP at 133-134.

Mr. Koontz then hired an attorney, Ms. Megan Card and filed a motion for reconsideration on April 7, 2016 asking the Court to reconsider its written order of child support entered on March 29, 2016. CP at 178-182. The court heard argument on April 15, 2016 and granted the motion to reconsider, in part. CP 183-184. The Court granted that I was to allow myself, Gaynor Fitzgerald to agree to have the original order that had included asking for support for and Elari's twin sister, Elsia, to be changed to only seeking support for Elari. I was unable get information regarding Elsia's schooling. Therefore, I decided to exclude the request for Elsia's support. CP 186. The rest of Mr. Koontz's requests were denied because he also wanted to decline support for Elari. For the record, Mr. Koontz wanted all of the figures to be amended on the order that Judge Wickham had signed, which was denied. All other issues in the motion were denied. CP 184.

IV. SUMMARY OF ARGUMENT

The Trial Court did not abuse its discretion by awarding post-secondary educational support for Elari. Sufficient evidence was entered into the record to find that Elari is dependent and relying upon Gaynor

Fitzgerald, her mother for the reasonable necessities of life. The record has evidence that Elari has to take subsidized and unsubsidized loans in order to pay for her day to day expenses. The record also shows that Elari's living expenses are not without cost to myself, Gaynor Fitzgerald, and the Trial Court awarded support accordingly. Also, Mr. Koontz himself admitted in his statement to the Family Court filed June 2nd 2015, that he readily agreed to paying post-secondary support for our oldest daughter Jessica. Mr. Koontz did so by signing a contract and entering it into the Family Court. CP at 246-247. Mr. Koontz paid for Jessica's post-secondary support for over a year as per court order. CP at 243-245.

ARGUMENT

- I. An Appellant Court should not upon review, interfere with the decision of a Trial Court regarding post-secondary support when there is no appearance from the entire record that injustice has been done or that the Trial Court has abused its judicial discretion.**

RCW 26.19.090 governs the parties to apply for post-secondary support in a proceeding for dissolution of marriage. The Washington State Supreme Court ruled in *Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978) that judges have the discretion to require a parent to support a child beyond the age of 18, if the child remains dependent on his or her parents for support. In 1990, the Legislature enacted RCW 26.19.090 governing post-secondary educational support awards. In this case the Trial Court and Family Court have both ruled in favor of Elari receiving post-secondary support.

Thurston County Family Court Commissioner Jonathon Lack ruled in favor of post-secondary support on December 21, 2015. CP at 78-81. Then, Thurston County Superior Court Judge Wickham ruled in favor of post-secondary support on March 4, 2016. CP at 161-175. Also a final order was signed on March 29th, 2016. CP at 176-177. In *Re Marriage of Stern*, 57 Wn.App.707, 717,789 P.2d.807 (1990), the reviewing Court cannot substitute its judgement for that of a Trial Court, unless the Trial Court's decision rests on unreasonable or untenable grounds. In *Re Marriage of Leslie*, 90 Win. App 796, 802, 954 P.2d. 330 (1998) for the Appellant to succeed, the Appellant must show that the Trial Courts decision was manifestly unreasonable or based upon untenable grounds or reasons. The Trial Courts decision was not manifestly unreasonable or based upon untenable grounds or reasons.

There have not been objections to the jurisdiction of the Thurston County Family Court, RCW 26.19.090 allows for parents to apply for post-secondary support expenses for their children. Therefore, the Trial Court did not error in awarding post-secondary support for Elari.

No two post-secondary education support cases present exactly the same issues, this is a case of equal treatment and equality amongst siblings for their post-secondary support, and therefore each case must be determined on the basis of its own particular facts and circumstances. Due to this, the Court is given wide discretion in matters relating to post-secondary support. The Appellate Court upon review should not interfere

with the Trial Courts decision's unless it appears based on the entire record that injustice has been done or that the Trial Court abused its judicial discretion. The Trial Court was fair and did not abuse its judicial discretion.

In open Court Mr. Koontz primarily represented himself, raised no argument, made no jurisdictional objections, and respected the authority and jurisdiction of the Thurston County Family Court. Mr. Koontz accepted my filings and the venue of the Court through the duration of the hearings. Mr. Koontz acted respectful of the ruling up until all parties received copies of Commissioner Lack's signed order on December 21, 2015. CP at 78-101. Mr. Koontz then decided to object to the order multiple times. CP at 102-105.

This appeal is clearly an abuse of process first, by Mr. Koontz unrepresented by himself in Family Court, and now Mr. Koontz, with his attorney Ms. Card in Superior and Appellant Court. There has been no abuse of discretion by the Family Court, only a failure by Mr. Koontz and his attorney to take into proper consideration how to present the facts and law relating to this particular matter, and arbitrate appropriately within the Family Court. Mr. Koontz instead has taken a detour from protocol in an unreasonable departure to the Appeals Court, which goes against precedence, and established judicial custom.

II. The Trial Court did consider if Elari is dependent upon her parents for the reasonable necessities of life.

In the case of *Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978) stated that if the child is not dependent on parents for the

reasonable necessities of life, then why do they have to borrow money? Our daughter Elari has to take out burdensome loans. The evidence shows that in Elari's financial statement submitted from the University of Washington Tacoma that she is taking subsidized and unsubsidized loans. CP 69. Elari does have grants and scholarships. CP 69-73; 111. However, those grants and scholarships do not cover all of Elari's expenses. Plus there is no reasonable assurance that Elari will receive the same grants and loans for the upcoming 2016/17 school year. Elari will not know what her award of scholarships and grants are until the fall quarter starts, which will not be until the end of September 2016.

Elari has been forced to take subsidized and unsubsidized loans so that she can afford her books and extra supplies that she needs for her courses. CP 69-73; 111. These loans will need to be paid back at roughly six percent interest rate. Elari has gas money expenses; she drives 62 miles round trip daily to get to school. Also, because of Elari's age Elari's insurance expenses are \$85.00 monthly for minimum coverage which is liability only. CP 14; 112. Elari's yearly car tabs are also an expense that needs to be paid.

Elari has a cell phone that I pay \$30.00 for monthly, this is for emergencies. Being a single young lady driving into areas of Tacoma can be dangerous. Elari needs a phone in case she needs to call for assistance like if her car breaks down, or gets a flat tire. Lastly, Elari lives at home with her mother, which is not without cost. Elari uses electricity, water, heat,

needs internet access to access her school online, most schools require that you do online work.. Elari needs food, laundry and hygiene products which are real costs of living. CP 5-10; 109.

Elari also needs to be on my vision insurance as Elari has serious issues with poor eyesight, and even with using vision insurance there is cost that goes beyond what the insurance will cover and pay for. On May 26 2016 this year, Elari ordered new glasses by using my insurance and the out of pocket cost was \$165.00, this expense is also paid for by myself. Gaynor Fitzgerald. Elari also needs to be on my dental insurance, which does not cover certain things, so I have out of pocket cost and there is a monthly fee that is taken out of my paycheck for the coverage to include Elari. Any cost that is over what the dental insurance will pay, then I have to cover because Elari is dependent on myself, the respondent. CP 108-109.

According to RCW 26.19.090 the record stated via a lengthy letter from myself, Gaynor Fitzgerald to the Trial Court explaining that Elari lives with me, her mother and has daily expenses. I also provided a financial worksheet that shows how much all of our household bills are. Those household bills have not been incurred by me alone. Elari is an active member of the household and uses all the amenities. These costs have been included in my worksheets. CP 5-10. If Elari were not living with me, she would struggle to support herself and attend school, she would most likely have to live in college dorms. CP at 109. Elari like other successful college students, would have to go on food stamps as she would have difficulty

purchasing food because she cannot have a full time job to support herself. If Elari had a full time job, then she would not be able to attend college full time. In order to get her degree Elari has to attend college full time, and her class schedule does not allow her to have spare time during the day. CP at 108.

In today's standards, it is essential to obtain a college degree in order to make a living that can support a person when they move out of their parents' home and need to support themselves. In my opinion, because I have experienced this, many people who do not have a college degree struggle in the areas of earning enough money to support themselves without the needs to rely on parental help or the government, via food stamps, or unemployment benefits. Rent alone, on the average for an apartment, starts at approximately \$500-\$800 a month. If a person on full time minimum wage which is less than \$10.00 an hour gets an apartment, then much of their income is gone for housing. This on top of all the other things that they will need, just in order to live. If a child is put through college by their parents then they are less likely to need to move home, or ask for any financial support that seems to be the norm for most people currently living in this country.

If Elari were to get some form of support from her father then she could decline those loans and support herself by paying her own bills and expenses. Currently, I primarily have to support Elari with her bills, living

costs and other expenses. The purpose of this post-secondary support request is, that Elari needs support from both of her parents.

Mr. Koontz and Ms. Card stated that Mr. Koontz should not be stuck with Elari's post-secondary education bill. Mr. Koontz is not being asked by me or the Court to sign on Elari's student loans, as many parents do for their children. Elari has shown outstanding character in seeking out her higher education. Elari made her own decision to take part in the Washington State Running Start Program which allowed her to with tremendous effort obtain her Associates Degree while also working on finishing her high school diploma requirements at the age of 18. The last two years of high school Elari attended South Puget Sound Community College while simultaneously working on her credits for high school graduation. CP at 11. Elari's academic history shows that she has the ability to finish college. Elari is currently half way through her Bachelor's degree and will complete it at the end of spring 2017 quarter.

If Elari had not decided to stay living at home, her expenses would be considerably more as she would have to live in college dorms which are in excess of over \$10,000 yearly. CP 74-75. Essentially by living at home with me, Elari has reduced her expenses which have helped with her college costs. Elari also signed up for College Bound Scholarship when in 8th grade, which helps to pay for some of her college classes.

In this case, the Family Court did find that Elari was dependent and relying upon her parents for the reasonable necessities of life. Specifically,

the Court concluded that Elari is of appropriate age, she has the need for financial assistance from her parents, and the child has the desire, aptitude and abilities to successfully complete a post-Secondary program. CP 78-81.

III. The Trial Court calculated Mr. Koontz's income according to what information he submitted to the courts; they did not include his wife's income.

Mr. Koontz has argued that the Trial Court calculated his income incorrectly. Mr. Koontz submitted his financial information via tax forms, and they calculated his income according to his pay stubs that he submitted from Houston Air. CP 29-33. Due to Mr. Koontz not providing his W2's, the Court looked at Mr. Koontz's pay check that he submitted from Houston Air where he makes \$22 an hour, and they imputed his income accordingly, pursuant to RCW 26.09.071. CP at 79. Ardith, Mr. Koontz's wife, did not provide any pay stubs so they could not have used her income at that time. The Trial Court looked at both parties, myself and Mr. Koontz's financial information, according to the financial worksheets that we both submitted; therefore the Trial Court did not error. CP 5-10; 45-50. If the Trial Court did error according to Mr. Koontz, then Mr. Koontz should have used rule CR60, and kept the Appellant Court from the process. The calculations from pay checks that Mr. Koontz claimed the Court errored on, would be considered a clerical error, which could have been fixed. Also, In Re the Marriage of King, 66 Wn.App. 134, 831 P.2d 1094 (1992) Division One of the Court of Appeals held if a Trial Court ruled that if there is a clerical

error made by the Trial Court, then being an error of clerical nature this exemplifies the reason that CR60 is in place. This allows courts to correct an error without resorting to additional trial. Mr. Koontz, through his attorney, could have brought their dissatisfaction of any figure issues to the Trial Court for consideration. This would have been a much easier way to correct what Mr. Koontz considered unfair, without involving and using the Appellant Court.

Again, if Mr. Koontz was concerned about miscalculations, he could have used rule CR60 and brought this to the Trial Court, and presented his dissatisfaction that he was concerned with in the Thurston County Family Court.

IV. The Trial Court set reasonable post-secondary support according to the Washington State Support Schedule and included Elari's one third share.

The Trial Court set reasonable post-secondary support for Elari and did calculate her one third share. CP at 80. If Mr. Koontz did not feel that the calculations were correct, included Elari's one third share, then again, he should have used rule CR60. Also, *In re Marriage of Cota*, 177 Wn.App.527, 536 312 P. 3d 695 (2013). The support orders expressly provided that financial aid, including scholarship, grants & student loans, would be applied to one-third obligation. So the Trial Court calculated Elari's grants, scholarships and loans as her one third share and ruled accordingly. CP 80; 108-109.

V. The Trial Court listed the termination language in the order pursuant to RCW 26.19.090.

Mr. Koontz also believes that the Trial Court erred by not listing specific termination language, and by not listing what each party is responsible for. However, in their brief on pg. 6 the last sentence in the 1st paragraph states that the order indeed included some of this language. This order also allowed Mr. Koontz to request suspension of support, should attendance and satisfactory progress in education cease. Again, if Mr. Koontz felt that the Court did not list certain language, then he should have used rule CR60.

All of the above errors in numbers I. II. III. IV. V. that Mr. Koontz claims the Trial Court made, are commonly known as a clerical error. In Superior Court, Judge Wickham appropriately considered all financial information that had been submitted by both parties. The Court considered the parties financial information according to the pay stubs submitted and the W2's, also the prior year's taxes. Both parties also submitted a financial declaration form. CP 5-13; 32-33; 45-50. Therefore, the Trial Court used a fair and equitable decision regarding the post-secondary support decision, and ordered the correct transfer payment according to what Mr. Koontz had submitted. Mr. Koontz claims that the Trial Court did not make the correct standard calculation as listed on line 17 of the worksheets. Again, this would be considered a clerical error, which could have been fixed. Also, In Re the Marriage of King, 66 Wn.App. 134, 831 P.2d 1094 (1992) Division One of the Court of Appeals held if a Trial Court ruled that there is a clerical error

made by the Trial Court, then being an error of clerical nature, this exemplifies the reason that CR60 is in place. It allows Courts to correct an error without resort to additional trial.

Why did Mr. Koontz through his attorney not ask the Trial Court to fix the error? This would have been a much easier way to correct an injustice without involving the Appellant Court. By all appearances this case has been brought in bad faith.

VI. The Trial Court considered whether the parties had intended for their children to attend college when they were together.

The Appellant has mentioned in his brief, that the Trial Court did not consider whether we as parents, had discussed our children attending college when they were old enough. Mr. Koontz's own statements filed on June 2nd 2015 3rd paragraph say he readily agreed to pay post-secondary support for our oldest daughter Jessica Fitzgerald. CP at 30. Mr. Koontz did pay post-secondary support for our oldest daughter Jessica starting in 2011, he paid for over a year. In 2011, I applied through the Family Court for post-secondary support for our oldest daughter Jessica. Mr. Koontz and I went to Family Court and Mr. Koontz agreed to and signed the order and agreed to this being reordered to the Family Court docket of this case to pay for post-secondary support for Jessica. CP at 246-247. In fact, Jessica was awarded post-secondary support in the amount of \$316.47 per month. The order was signed on March 29, 2011. CP at 248-251. If Mr. Koontz paid post-secondary support for one of his daughters, then that alone shows that

we had intended to help support our children through college. If Mr. Koontz had no intentions of paying post-secondary support, then why would he pay for one of his children? Should the Courts allow Mr. Koontz to show preference between his children? The Trial Court deemed that Mr. Koontz and I had intentions to support our children while in college, and ruled accordingly.

After repeated visits to the law library on Capitol Hill, I find that there are well over 10,000 cases on post-secondary support issues. The web search was narrowed, and I was unable to find cases regarding equality amongst children in regards to post-secondary support. This was difficult to research in the time period given to respond to Attorney Card and her client Mr. Koontz's Appellant Brief. On COURTS.WA.GOV, I spent numerous hours trying to research case law regarding this matter of equal treatment amongst siblings. I was unable to find any. However, there has to be case law somewhere that defines equal treatment of children in post-secondary support issues. I ask that the Courts consider this when they are deciding whether a parent should treat their children differently in regards to supporting their higher education.

Misleading Statements

1. The following information shows the defects in the record presented by the Appellant and his attorney, contradictions put forth in pleadings at each court levels, including briefs that they have respectfully

submitted to the Appellant Court. I, Gaynor Fitzgerald was not ordered by the Court five separate times to provide information. The facts are, only three times I was asked by the Courts to supplement information. In Court on July 16th 2015, both myself and Mr. Koontz were asked to provide updated income information. CP at 59. The two times that I was asked by the Courts to provide information regarding Elari's fees, tuition etc., that information was provided in a timely manner. CP 62-76; 106-114.

In fact, in Mr. Koontz's brief on his own admission with his attorney, he admits on page 4, 2nd paragraph that both parties had not provided the correct financial information and we were both asked by the Court to do so. Mr. Koontz also finishes the paragraph by stating that both parties supplemented the record with financial information. CP 59-61. This was the first time of many incidences that Mr. Koontz and his attorney contradicted themselves in their own brief.

The 3rd paragraph actually states the date that the Courts asked only me for more information which was on August 13th, 2015. CP 62-64. I filed that paperwork requested on September 15th 2015. CP 65-76.

That paperwork was filed in a timely manner for the September 21st Court date and Mr. Koontz in his own admission with his attorney on page 4 paragraph 3 states the date that I provided the information to the Court. I did as I was requested to do so which was on September 15th, 2015. CP 65-76. This was the second time that Mr. Koontz and his attorney contradicted themselves.

In the Appellant's opening brief on page 5 in the 2nd paragraph Mr. Koontz stated the third time I was asked to submit information to the Courts which was on February 19th, 2016. CP 106; 107-114. Then, by his own admission with his attorney, he also states the date that I submitted that same information, which was on February 24th, 2016. CP 107-114. This was a third time that Mr. Koontz and his attorney contradicted themselves.

2. Also, when Mr. Koontz disclosed to the Courts that his wife Ardith Koontz had worked for the Washington State Labor & Industries for close to 20 years as an L & I workers compensation adjudicator III, and although Mr. Koontz stated she currently has no income, Mr. Koontz misled the Court as he failed to mention she will in fact be eligible for retirement from that employer when she turns 55, Ardith is close to that age, if not already at that age. Mr. Koontz mentioned this while on the phone to Commissioner Lack during one of our Family Court appearances. I am bringing this to the Courts attention because first Mr. Koontz misled them and also I know that the courts do not count a person's spouse's income as a part of their actual earnings, but the Courts need to know that Mr. Koontz does have other support for his day to day living expenses and needs outside of his own income. I however, am a single parent and have no additional support from a spouse.

3. Mr. Koontz again misled the Appellant Court on page 13 of his brief when he informed them that he had to sell his home in order to support Elari. He also claims that now he has to live on a 37 foot boat because of the

hardship. CP at 30. He did not have to sell his home in order to support Elari. Mr. Koontz has not had to pay anything for Elari's post-secondary support. Mr. Koontz had already sold his home prior to this post-secondary support request being submitted to the Court. In fact, Mr. Koontz's wife closed on their home May 22nd 2015. CP at 37. The paperwork for the home closing was filed to the Courts on June 2nd, 2015. CP 29-37. Mr. Koontz own statement saying that he moved to Florida on the boat in August 2014, which was nine months prior to me applying to the Courts for post-secondary support. CP at 30. I did not put my request for post-secondary support into the Courts until May 22nd, 2015, which was the same day the home closed. CP 23-28. Which also means Mr. Koontz was not served until shortly after that date. Mr. Koontz was already living in Florida on his boat at that time.

Mr. Koontz did not update his information and where he had moved to with the Courts or the Department of Child Support Services. I was unable to perfect service to Mr. Koontz because of his inaccurate contact information. With no contact information to be found anywhere, I had to hire a skip tracer, Eagle Legal Services, to locate Mr. Koontz which was very costly to me. CP 110. If I had not hired the skip tracer, then I would not have been able to get Mr. Koontz served in a timely manner in order to submit this post-secondary support order. In doing my background research, his statement regarding having to sell his home in order to support Elari is misleading to the Court, and again in bad faith.

Mr. Koontz and his current wife talked to our children about it being their dream to live on a boat in a warmer place. As the Koontz's have stated, they are living on a boat because that is what they wanted to do, and not because they are being forced to. They were waiting to move there until a time when Mr. Koontz no longer had to pay child support, so again that statement was misleading to the Courts.

Mr. Koontz claims that he has not received information from me regarding Elari's school updates. Mr. Koontz has been provided with all the same information that I submitted to the courts. I have sent it all to his Florida address that he now has on record. In the future I will be sending all of the information to Mr. Koontz's address, via recorded delivery so that I will have either a signature for receipt of the documents, or a refusal signature from the deliverer. This way, I will know that I have achieved and perfected service. Why would I go to the trouble to hire a costly skip tracer, such as Eagle Legal Services to find Mr. Koontz, if I had no intentions of mailing him the information that I wanted him to have?

4. Mr. Koontz again misled the Courts when he added that I, Gaynor Fitzgerald was awarded all of the equity in our home amounting to \$300,000. CP at 30. Mr. Koontz deliberately forgot to mention that I, Gaynor Fitzgerald provided a declaration statement to the Courts on June 15th 2015, showing that Mr. Koontz in fact signed a Quit Claim Deed for his share of the monies and equity of the family home to his father. CP at 40. Mr. Koontz could have been awarded just as much of the family home

proceeds as I was. I also provided a statement of where all the money went to include two attorney bills one for \$6,133.97, and another for \$2,593.77. I also had to pay property taxes and arrears for two properties that were not paid for four years amounting to \$16,016.95 and \$2,785.32 . Lastly, I had to pay the entire mortgage amount that was still owed for the home that we had purchased, this amounted to \$85,000.00. CP 44. Mr. Koontz signing his share over to his father meant that he walked away without any responsibility to pay any of those arrearages. I actually wound up with \$155,077.00 which went on the house that I currently live in so that I could provide a home for my four children. Again, its apparent that Mr. Koontz has misled the Court by his statement that I was awarded \$300,000, making it sound like I have an abundance of money available to help our daughter Elari.

ATTORNEY'S FEES

As the respondent to the Appellants opening brief, I make the following argument in objection to the Appellants request for attorney fees.

1. The Trial Court did not award attorney fees to Mr. Koontz. In Re the Marriage of Griffin, 114 Wn.2d.772, 779-80, 791 P2d. 519 (1990). In awarding attorney fees on appeal, the Court should examine the arguable merit of the issues on appeal and the financial resources of the respective parties. Mr. Koontz has his own job and ability to pay for his own attorney fees. Attorney fees are each person's responsibility when they have their own means to pay them. Courts consider the parties

financial resources, RCW 26.09.140. Mr. Koontz has a job, and a spouse to help him provide for his own finances.

2. Neither I, nor Mr. Koontz signed a contract stating that we would pay each other's attorney fees.

3. Pursuant to state law RCW 26.09.175 provision 3.14 a person, including myself, can ask the Court for modification of child support for post-secondary expenses. Also, *Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978) gives Judges discretion in awarding post-secondary support for children who are dependent on their parents for the necessities of life.

4. None of the mistakes that Mr. Koontz is claiming were made by myself, Gaynor Fitzgerald. Mr. Koontz is claiming that the Court erred. In *Re the Marriage of King*, 66 Wn.App. 134, 831 P.2d 1094 (1992), states that clerical errors should have been fixed by using the CR60 rule and not resorting to additional trials and involving the Appellant Court. Mr. Koontz should have used rule CR60 and avoided coming before the Court of Appeals which would have saved time and costly attorney's fees. Also, in *Re Marriage of Griffin*, 114 Wn.2d, 772, 779-80, 791 P2d 519 (1990) The Appellant Court decided that although there may have been clerical errors, the Court held that each party shall bear his or her own costs and attorney fees on appeal.

5. Mr. Koontz and his counsel claim that I was asked 5 different times to provide documentation to the Courts regarding Elari's college expenses,

tuition fees, grants, scholarships, and classes enrolled in, and yet they claim I did not comply. I did comply.

6. It was not five different times; it was only 3 times that I was asked by the Court to provide information. Mr. Koontz by his own admission, and with his attorney, have stated all of the dates that I did provide that information to the courts as provided in my Misleading Statements section of my response brief page 16-21. CP 60-61; 65-76; 107-114.

7. Mr. Koontz claims that the Court erred by not having language stating that Mr. Koontz can terminate support should attendance and satisfactory progress in education cease. In their brief, on pg. 6 the last sentence in the 1st paragraph states, that the order indeed included some of this “language”, if they felt language was missing they should have asked the Trial Court to fix it using CR60.

Mr. Koontz’s attorneys opening Appellant brief have been burdensome and very difficult to effectively draft a response to, as the opening brief has an abundance of contradictory statements. The Appellant’s brief contains false representations and has content not based on fact and on the legal and actual conclusions and or decisions within the Family Court. The same pattern is manifest in the Appellant’s opening brief. I present to the Court re: Mr. Koontz and his attorney representations as follows: CR11 mandates that briefs, drafts and pleadings must be as follows:

(1) it is well grounded in fact;

(2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

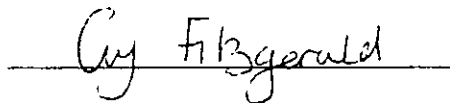
CONCLUSION

The Trial Court did not error by ordering post-secondary educational support for Elari; the record does reflect Elari is dependent or relying upon her parents for the necessities of life. Elari still lives at home with me, her mother Gaynor Fitzgerald, where she has shelter and help with many other necessities of life. There is supporting evidence as to Elari's financial needs or otherwise, factors laid out in RCW 26.19.090. Elari does have to accept subsidized and unsubsidized loans in order to pay for her college expenses. Elari is on my dental and vision insurance which is not without cost.

The purpose of seeking the courts help was for Elari's assistance from her father who has already paid post-secondary support for Jessica, our oldest daughter. If her father would have assisted, Elari would not have had to get the subsidized and unsubsidized loans that she has currently been receiving to cover her expenses, which are very costly. I submit this response as Elari's mother, a non-lawyer, Pro Se, not represented by counsel as I could not afford to retain a law firm or attorney to assist me. I, Gaynor Fitzgerald in good faith, make this response to the Appellant's brief.

I ask the Court to affirm the Family Courts ruling for post-secondary education support, which is based on reasonable grounds.

Respectfully submitted this 19 day of October, 2016

A handwritten signature in cursive script, reading "Gay Fitzgerald", is written over a horizontal line.

Gaynor Fitzgerald
Pro Se

Certificate of Service

I, the undersigned hereby certify under penalty of perjury of the laws of the State of Washington that I cause the foregoing Brief of Respondent to be served upon:

Megan D Card
Rogers Kee & Card, P.S.
324 West Bay Drive, NW, Ste, 201
Olympia, WA 98502

Service was accomplished by email to

MeganC@budbaylaw.com

as per mutual agreement by both parties.

Dated this 19 day of October, 2016.

Gaynor J Fitzgerald

Gy Fitzgerald

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